UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION	)	12-MDL-2323-AB
Kevin Turner and Shawn Wooden, on behalf of themselves and others similarly situated, Plaintiffs, vs. National Football League and NFL Properties, LLC, successor-in-interest to NFL Properties, Inc., Defendants.	)	Philadelphia, PA May 7, 2019 10:39 a.m.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE ANITA B. BRODY
UNITED STATES DISTRICT JUDGE

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I N D E X

(The following was heard at 10:32 a.m.)

THE COURT: -- Players' Concussion Injury Litigation at Docket Number 2012-2323, and we're here -- I want to recognize Orran -- Mr. Brown --

MR. BROWN: Yes, good morning, Your Honor.

THE COURT: -- and with you?

MR. BROWN: Is Roma Petkauskas from our firm, Your Honor.

THE COURT: Okay, thank you. And for the NFL?

MR. BIRENBOIM: Bruce Birenboim from Paul, Weiss. I'm here with Claudia Hammerman, and Brad Karp is on a train that's delayed, but he'll be here any minute.

THE COURT: Okay.

MR. BIRENBOIM: He apologizes.

THE COURT: Do you want me to wait?

MR. BIRENBOIM: No, we can proceed.

THE COURT: Okay. All right. And the people who are here for the plaintiffs are Gene Locks, David Langfitt, is that right? Who's going to be speaking?

MR. LOCKS: We -- both. I'm going to have an introductory statement and then he's going to carry the ball.

THE COURT: Okay. And Mr. Buckman (sic), hi.

MR. BUCHANAN: Good morning, Your Honor.

THE COURT: And, Mr. Rosenberg --

MR. ROSENBERG: Yes, Your Honor, good morning.

THE COURT: And Scott George, is that correct?

MR. GEORGE: Good morning, Your Honor.

THE COURT: Okay. All right, let's begin with your introductory statement, Mr. Locks.

MR. LOCKS: Your Honor, our efforts at the moment are to be constructive and not destructive. My motive is to make this work and make it work better, and that's what we're trying to do. It's very personal to me because I did play college football and I have a close friend who's an end-stage --

THE COURT: Are you a plaintiff? No? You're not a member of the class?

MR. LOCKS: No, I didn't make it into the pros, Your Honor.

THE COURT: I'm only kidding.

MR. LOCKS: I only went -- I only played at Princeton, but in those days they played pretty good football. And one of my closest friends, a lineman, is an end-stage Alzheimer's as we speak, a former lawyer at Dechert in this -- didn't work here, he worked overseas -- from the kind of treatment we got maybe playing football.

Another close friend that we played against and we beat from Yale, he is a former player who died with Alzheimer's and CTE and was a plaintiff and recovered. So really, really this was a great idea, it's a great program,

it's a great settlement and it's within the benefit that we support.

However, part of the program and part of the support of the players was always to have the freedom of choice to decide who they could go to for medical treatment and have the freedom to make those decisions.

They had bad experiences with the NFL benefit programs, both during their playing time and after their playing time, when they felt that they were used and abused and were not going to the doctors that they wanted to.

When we went to get support for this case -- and at the time we originally had 1,300 players under agreements, 1,100 were registered -- when we went around to get the support of the players, the most important issue to them was can we go to whatever doctor we wish, and that was a main, main concern and it was important.

Now, very quickly, the 150-mile rule plus, unequivocally was only put in place for fraud. There was no other reason valid expressed and it was told specifically to me that was the reason it was put in.

And frankly, as David will explain and as we talk about the balance of the changes that have been made by Mr. -- the Claims Administrator, that rule is not needed. It's particularly not needed if it's mandatory and it should only be a factor in evaluating the merits of a medical report or

case. By the way, it's not workable. There are not enough doctors in the program as we speak today.

They're limited in their specialties, many of them. I learned there are 30 different specialties of neurology and only three -- four or maybe five apply to this kind of medical evaluations. The doctors have not all got the experience of dealing with players with this type of injury.

Because the sole reason for the 150-mile rule is fraud, Mr. Greer has been very successful in finding the bad guys, the bad doctors, the bad lawyers who have committed the frauds, but having said that, with the new programs in place, there does not need to be an added fraud provision like the 150-mile rule.

And frankly, all the players should not be punished for the violations of a few. Mr. Langfitt has a lot to say about the rest of the substance. I leave it up to him.

THE COURT: Okay. And, Mr. Buchanan, are you going to be speaking also?

MR. BUCHANAN: I will, Your Honor.

THE COURT: Okay.

MR. BUCHANAN: Thank you.

MR. LANGFITT: Thank you, Your Honor. May it please the Court, my name is David Langfitt for the moving parties.

THE COURT: Okay.

MR. LANGFITT: Picking up where Mr. Locks left off,

by way of background, the MAF program and the generally consistent standard were not in the agreement this Court rejected in January of 2014. They only came after that agreement.

They came in the agreement that Mr. Buchanan negotiated and that MAF program and the generally consistent standard were really essential bargaining benefits that Mr. Buchanan and Mr. Seeger primarily obtained from the NFL.

The NFL for its part got its anti-fraud provisions and when the Court looks at the numbers that are being posted on the website and seeing that there are 2,700 claims submitted and 843 awards, I think overall, those robust fraud provisions are working.

But this was a bargain that Mr. Buchanan and Mr. Seeger struck with the support of other class counsel and part of that is the choice of an MAF physician. And what I would submit to the Court is that the 150-mile rule as Mr. Locks stated is one to restrict that choice and it's one based on an anti-fraud sentiment.

We support the anti-fraud provisions. We think that they're working well. We see that. We think to turn a privilege, a right bargained for within that six-month period between January and June or July of 2014 into a restriction, we think is unfounded and we don't think it would work.

Now, if you move on -- and the same would be true of

Provision 10 in the new MAF rules about restricting the choice of a neuropsychologist for an MAF evaluation, we think that there's -- and we applaud Mr. Brown by the way and Ms. Petkauskas for developing the program, we want the best physicians in there.

And I think that they would agree that when they see what we do in terms of choosing physicians, we choose them based on quality. We want as many cognitive and behavioral neurologists in that program as possible, and we think that the developments of an advisory council to the Court of ten or more MAF physicians to develop that network is just a great idea.

So we thoroughly applaud it, but we think the restriction is unnecessary and we think actually it does materially change the bargain that was struck between January and July of 2014.

Now, with respect to Rule 13K, that -- that's a knotty rule and we do see within the agreement that the restriction does exist, but it restricts MAF physicians from serving for opt-outs in related litigation in the settlement agreement itself.

So what we would propose to Your Honor -- and we have a complete compare right of the rules that Mr. Brown prepared and we can certainly submit that, we want to be productive and helpful, we think that if the Court allowed us

to sit down with the stakeholders here including BrownGreer and the Special Masters, we think that we could come up with rules that they all -- we all could agree to and that the Court could approve, and it wouldn't in any way resemble an amendment. It would balance the bargain that was struck.

THE COURT: Well, what's your -- articulate it. This is your chance.

MR. LANGFITT: In 13K, in Paragraph 13K what we would suggest --

THE COURT: And tell me what -- 13K is 150?

MR. LANGFITT: No, it is not.

THE COURT: Well tell me what it is.

MR. LANGFITT: 13K is the provision that prevents an MAF physician from serving as a consulting or litigation expert --

THE COURT: Oh.

MR. LANGFITT: -- in related litigation. I understand, Your Honor, I just think that BrownGreer should have the discretion to approve or disapprove that, and I would leave that to BrownGreer. I think that they can approve it or disapprove it depending on a case-by-case basis, I think that would be fair.

As to the 150-mile rule, I would suggest that that be re-written as non-mandatory but urged upon the player by the Court and by BrownGreer for one simple reason. This whole

program is about the health of the players. The NFL decided they were going to do something that was very beneficial to the players, and they are. And the plaintiffs' lawyers want the same thing.

And so by having -- by urging players to focus on doctors who are near them, we all know that this is an ongoing problem, one -- it's not a one-and-done thing. If someone goes to a doctor, they don't necessarily get a qualifying diagnosis. In the BAP, I think maybe six percent get qualifying diagnostics.

But they have those baselines and so if they go and they are urged and encouraged by the Court to go to doctors nearby that they can repeatedly go to using their insurance in the future, that means the goal of monitoring players is achieved.

They get monitored by qualified MAFs that the Claims Administrator is recruiting and developing with the Court's assistance. Once they get these -- these people in place, this will fulfill the ultimate goal of the program because the players go back to those doctors. They trust those doctors. They know they're not too far away.

So they can go -- a player who goes in and gets a negative baseline test -- well first of all, that's great news for anybody, but if two, three, four years down the line something goes wrong, the spouse starts to notice things, the

player goes back to the MAF using insurance and sees what happens maybe in a 45 minute visit. That's a real benefit.

But making it mandatory is changing the bargain that Mr. Buchanan and Mr. Seeger struck long ago and I think that if it's encouraged, you're going -- we -- we collectively are going to succeed in the goal that we set a long time ago.

And I don't mean just Mr. Buchanan and me, I mean Mr. Birenboim, I mean BrownGreer, we can all succeed in this. And when we come in here, Your Honor, first of all, we're very grateful that you granted this hearing. We really want to be productive and we think that based on the fact that we represent so many players, we've had so many evaluations done, not just BAP but also MAF, we feel that we have a lot to bring to the table --

THE COURT: Thank you.

MR. LANGFITT: -- okay?

THE COURT: Okay, thank you.

MR. LANGFITT: Now, is -- there's one other thing and I really want to get to the --

THE COURT: Well let's --

MR. LANGFITT: -- the AAP issue. For example, we think that BrownGreer deserves --

THE COURT: Is this in your papers?

MR. LANGFITT: Forgive me?

THE COURT: Is this in your papers?

MR. LANGFITT: It is -- the -- it is not in the papers, but it's one of the things that Mr. Brown touched upon in his rules and it's the --

THE COURT: I'm not -- you asked me to consider certain things today and you wrote them out. I took them in, I let you have a hearing. That's what the hearing is on. If you have some other complaints, if you don't mind, any -- not -- this has nothing to do with the Steering Committee, this is -- you are a lawyer representing private clients and you will have that right to do.

MR. LANGFITT: Very good. Thank you.

THE COURT: Thank you.

Mr. Buchanan.

MR. BUCHANAN: Good morning, Your Honor.

THE COURT: Good morning.

MR. BUCHANAN: I am going to address one issue. It's the restriction on the 150-mile radius in the rule as adopted by the Court.

THE COURT: Well that's what -- that's what your colleague has --

MR. BUCHANAN: Indeed, and I think in looking at the data -- and we read Mr. Brown's response -- as I understand Mr. Brown's response, the hope is that to address something up front to minimize if you will addressing this on the back end, and we accept certainly what he says, that exceptions will be

liberally granted, but we have some concerns.

One, we think the necessity -- and this is where we agree with the Locks Firm and their position on this -- the necessity for this we think is greatly overstated, and I would like to go through some of the data with Your Honor.

If you turn -- just for the record -- page ten of Mr. Brown's submission highlights three factual bases for this need. The first point, Your Honor, concerns pre-effective date diagnoses associated with Dr. Hoover.

As you recall, a large number of neuropsychologists who reviewed a number of players, players traveled great distances to go to see her, maybe with or without the guidance of counsel, and a number of claims were denied and permitted to be resubmitted with different reviews by other doctors.

That's point one, all pre-effective date diagnoses all tied to one doctor. Again, a physician who had not been screened by BrownGreer and signed off on by co-lead counsel for the plaintiffs or for the NFL.

Two, pre-effective diagnoses of -- I think submitted by two law firms that are currently the subject of an audit/special investigator review. Those claims obviously denied, pre-effective date, reviewed by physicians not approved by BrownGreer.

There's the example now of reviews conducted by four physicians who were MAF doctors who have since not been

renewed and they're no longer seeing players. They're now out of the program. But what we see actually when we look at the data and in response to Mr. Brown's submission, this is not in our papers -- our argument obviously as to why it's not necessary is in the papers, but responding to what Mr. Brown wrote on Friday, we looked at the data for the statement -- for the appeals that have been taken by the NFL, perhaps the greatest indication that there's an issue with the medical diagnosis in the claim.

And what we see actually is the NFL is appealing 30 percent of approved claims of MAF doctors that are local -- appealing 30 percent that are local, they're appealing 27 percent that are not local outside 150 miles, and that includes the claims of the four doctors that are no longer going to be seeing patients under the program.

When we take them out and we look at what's the practice then with regard to concerning diagnoses, we see that the NFL has been appealing 17 percent of local doctor diagnoses and 13 percent of non-local doctor diagnoses. Essentially there's no difference.

And so where we are and as our papers did reflect, this should be determined on the quality of the diagnoses, this should be determined on the basis of, you know, the diagnosis that is rendered by the MAF doctor, the information is provided to the Claims Administrator, provide the right of

the claimant or if they're guided by counsel to select physicians for the very reasons that Mr. Langfitt said, and we endorse.

If somebody wants to travel to Columbia to see a world-renowned physician, to see their associated world-renowned neuropsychologist knowing that that may be the best place for care, they should have that right.

It's their expense, it was negotiated for, we think that's an appropriate selection, but I think the data really unpacks it all because we don't have an issue. Yes, people have traveled great distances and there's -- there are instances unfortunately where the very few have I think with good intentions suggested that this would be a good idea.

But it doesn't manifest in the data. The NFL is appealing frankly equally local and non-local diagnoses, actually they're appealing slightly more of the local diagnoses. So we think that rule should be revisited.

A suggestion from the Claims Administrator -- you should generally go within this room, certainly it's going to eliminate any concern that you've done it for an improper motive, and we think -- and maybe that raises a potential red flag, the data doesn't bear it out, Your Honor.

Finally, there is a concern on our part that by addressing something up front by the Claims Administrator, we do give rise to yet another potential objection by the NFL.

So if the claimant calls in and as Mr. Brown, as he said granted the extension for a reason that he perceived to be a proper medical basis for a legitimate non-pretextual reason and then that claim gets approved and then the NFL looks at it, it would be brief point one in the appeal, but it may be brief point two or brief point three that there were other appropriate physicians who could have seen this person within 150 miles -- you know, the Claims Administrator abused his discretion granting the exception to the 150-mile rule.

We think guidance that hey, you should look first in your region, see if you can satisfy yourself, there should generally, as what we had proposed, would be a more prudent course because the data ultimately doesn't support a greater weight of problems outside 150 miles versus inside with regard to the NFL's challenges to diagnoses.

THE COURT: Okay, thank you.

MR. BUCHANAN: Thank you, Your Honor.

THE COURT: Okay. Mr. Brown.

MR. BROWN: Good morning, Your Honor --

THE COURT: Good morning.

MR. BROWN: May it please the Court, I'm Orran Brown from BrownGreer. We are the Claims Administrator and with me today as I said earlier is Roma Petkauskas of our firm, and if it's -- if it's all right, Your Honor, I have some slides with some information to sort of set the stage --

THE COURT: That's fine.

MR. BROWN: -- for this discussion --

THE COURT: That's fine.

MR. BROWN: -- and that will require me to approach the be at that bench over there --

THE COURT: Over here?

MR. BROWN: -- so I can use the monitor?

THE COURT: Sure.

MR. BROWN: But I think I can speak loudly enough and there's a mic there.

THE COURT: Is there?

MR. BROWN: Thank you.

THE COURT: Will it be on the big screen?

MR. BROWN: Yes.

THE COURT: Oh, it will. Oh sure, no problem.

MR. BROWN: If that's all right with Your Honor.

THE COURT: Yes, there's a -- there's a microphone there.

MR. BROWN: Good. So and the point, Your Honor, is there's a lot of information here, and please stop me if you don't need to hear this or if you don't think it's helpful to all of us gathered together today, because our -- our goal in this as we've said in our papers is that we don't -- we're not really in opposition to class counsel or the NFL, we are -- we are a neutral fiduciary.

We collaborate instead of litigate. We want to make this work correctly and that's what we're trying to do. We --

THE COURT: I appreciate that.

MR. BROWN: We know that there's no system that just works, there's no process that just works by itself. We have to have systems, and we create systems that are workable and we continually fine-tune them, react to experience as things evolve -- evolve in the program, and then adjust, and that's what this is.

These are kind of mid-course adjustments to react to circumstances we're seeing, and that's what we hope is effective. So just to set the stage, Your Honor -- and these numbers appear in the papers and so we're just reminding ourselves that we have over 20,000 people who timely registered for this program.

Some of those are players, some of those are representatives of players, some of those are representatives of deceased players. And we've been through them all, and we have after all of this, a little over 15,000 players or representatives of incapacitated players who might be looking for and have the opportunity to go to this qualified MAF physician for a diagnosis.

Most of these, as you can see, are BAP-eligible players, so they can go to the BAP system for a free diagnosis for level 1.5 and 2 neurocognitive impairment, but for the

other diagnoses and for those two, you can go to a qualified MAF physician. And so we're starting out with that audience and so far since we opened the claims process in February of 2017, we've gotten 27,074 monetary award claims and that's -- this shows what qualifying diagnoses were asserted.

There are always some that are -- they don't give us a diagnosing certification so we don't know what the claim is, they eventually are either made complete or we have to deny them because they don't have a diagnosis at all. But the bulk of the activity that we've had are at the level 2 and 1.5 claims.

That's where most of our claim activity has been and that's -- that's what we've been processing. We have been through those claims and issued monetary awards of payable conditions of over $659 million, and over $558 million has been funded by the NFL where they put in the money for us to pay them and then it goes though a process that's in the settlement agreement to get paid.

We've paid over $485 million and these other payments here, it's about 150 million that are in the pipeline, will be paid soon. It's a two -- almost a two-month cycle to get approvals funding-to-pay, but this program has sent out approaching three-quarters of a billion dollars, and we'll soon hit that mark so it is working.

As our colleague said, the process is working and

the question is, is it working the best way it can. We're still getting claims. This shows -- the top lines are claims that are diagnosed by MAF physicians.

The bottom line is the ones that come from BAP providers, we're getting about 45 to 42 new claims a month, and about 20 of them or about five a week are coming from diagnoses by MAF physicians and about three or four a week -- 12 or so a month are coming from BAP providers, and we're receiving claims regularly and of course they go into our review system immediately.

And this slide is just a snapshot of all the claims we've ever gotten and where they are. There are 704 for example that are still in review somewhere along the pipeline with us or through the process of the AP reviewing pre-effective date claims. That system is working. We have 27 claims currently on appeal.

We've had 35 percent of the claims that either had been withdrawn or got denied in some way, and we have this number of claims sitting in Audit right now. That number used to be a lot larger. We've worked through the audit process with the Special Masters, and here's the 740 claims that we paid.

And we keep track of all of this on a regular basis and it's posted publically so that people can see how the process is working. These three charts here so whether it's

pre-effective date claims or MAF diagnoses or BAP diagnoses, what's happened to them -- it's a little bit hard to match up the pie slices with the colors -- and so that's really what's happened to our claims by source of diagnosis -- either pre-effective date or MAF physicians or the BAP physicians.

We have been through these claims or are going through them now and the program is moving obviously to where the claims we're getting now are from MAF or BAP physicians mostly. The pre-effective claims had to be filed with us by February the 6th of this year.

And so now we're moving into the mature stage of this program where the MAF physicians and the BAP providers are really seeing the players to find out if they have these conditions, and if so, tell us about them, and if they qualify, they will get paid if their diagnosis is correct.

And so we're now moving into that phase, and as we should be, and these MAF physicians are really the lynchpin of this program for the next 63 years, as our colleague said in their papers, that this is a key component of this program --

THE COURT: You mean after 63 years I can escape.

MR. BROWN: Yes, you can.

THE COURT: Okay.

MR. BROWN: So can I. But it's -- it's here for these physicians to be able to see these players and do two things -- give them an accurate picture of their conditions so

that they know what's going on and if they need care and treatment, and then if they qualify and meet the criteria in the settlement agreement, they will get paid. So there's two things going on here, conditions and compensation.

Now, this network of physicians that we -- the settlement calls for that we set up on time and we nominate candidates and then the parties -- the co-lead class counsel and the NFL parties can -- they either agree or don't agree.

If either one objects, that doctor does not get appointed in the network, and we have been trying to cultivate this group now more vigorously just in the last -- once we realized we -- it doesn't -- it just doesn't sell itself.

We have to push this to get these physicians interested and committed and enthusiastic and realize the significance of what they're doing, not only get them on board and train them, but keep them engaged and make them see that their work in this program is important and meaningful.

We developed this logo for the network that we're now trying to have some more identity for the program among these physicians and peer-to-peer discussions, but we have, as Mr. Locks and Mr. Langfitt said, we have 121 physicians now serving in 40 major cities or metropolitan areas.

Now, we've had others that we found -- 52 of them that we put up, and they didn't get appointed because either one of both sides didn't agree to their credentials or their

appointment. We had -- this is one issue that has concerned us, and while we're being more aggressive now about finding these folks, is that we had 64 people who made it through the approval process and signed their contracts with us, but then withdrew and told us they don't want to do it anymore either because they weren't seeing anybody or they feel like it's taking up too much time, or they don't want to deal with legal things.

They have been -- they don't like the back-and-forth. They've had lawyers or players come back to them and ask them to change their findings or change their diagnosis and they don't want to be in that position.

They feel uncomfortable with it and we've had people quit the program because they don't want to be involved in that with the back-and-forth. They want to make their diagnosis, turn it in and make sure it's right. That's what we're seeing among these physicians.

There are these -- these kind of companion networks of BAP providers in that -- in the baseline assessment program and our MAF physicians and there's a lot of overlap, but they're not all the same.

As it says here, we've got about two-thirds of the doctors are in both camps but we have segments that are one and not the other, as these members show us, and some doctors want to do just one and not the other for whatever reason.

But we have been engaging much more aggressively in the last few months with the approval and advice of the Special Masters to cultivate this group of MAF physicians more aggressively than we have been. It's like a garden, it has to be tended to and curated for it to produce and actually be as productive as you want it to.

So we, for example, looking at the -- this is sort of a heat map of the whole country, this shows us where the players are and where the doctors are and it's little tough to make out particularly if you're color blind like I am, but these -- these circles down here represent concentrations of players.

With the dark green it's like zero to 300 and the light green is up to 600 and yellow is up to 900 and red is up to 1,500. The orange is up to 1,200 and then the little symbols -- the medical symbol, that's where we have physicians -- MAF physicians.

And this, as our papers say, we have 91 percent of the living players had a physician in this network within 150 miles of them, at least one. There's about 1,700 of them who have only one. These little blue dots here, the smaller dots, that's where there's players -- a player living and some of those are not within 150 of a physician. 91 percent of them are.

But we think that in the situations where they don't

have a person close, then that's what the exception process is for. We're going to help them get through the process to go see a physician. But we're still working to find more doctors to fill up all of these holes because we've been trying to find them, we have found them, but we're being much more aggressive about that.

For example, this week starting Saturday in Philadelphia, this American Academy of Neurology which is a huge organization, had been having its annual meeting here in Philadelphia.

So we went there and working with the Special Masters' approval and ideas we set up a booth there, that's what it looks like, where these physicians can go through and we have people there staffing it since Saturday talking to them about the program. A lot of them hadn't been in touch with us before.

This is the banner behind the table. We're trying to be visible and show where we have people, where we would like to have people, because we want more physicians in the network. We have --

THE COURT: Let me ask you something. You mentioned about players and lawyers on the plaintiffs' side contacting -- I think that's something that shouldn't happen after the examination and if you would like to suggest to me, I might consider making that such an abuse. That's just not

appropriate. This is -- this is similar to an independent medical examination if you will --

MR. BROWN: Yes.

THE COURT: -- and you can't go back to the doctor and argue with them. I mean, that just can't be done and I would -- you and I can talk about that --

MR. BROWN: Yes, Your Honor.

THE COURT: -- after, but this is not something that I would seriously consider.

MR. BROWN: Yes, Your Honor, we've been trying to discourage that and trying -- and telling the doctors that --

THE COURT: Or their lawyers.

MR. BROWN: -- and but we don't want the back-and-forth trying to --

THE COURT: Oh, absolutely.

MR. BROWN: -- change the --

THE COURT: Absolutely not. They --

MR. BROWN: So yes.

THE COURT: And if I were a neurologist, I would be very concerned about somebody coming back and trying to argue with me about what kind of diagnosis I made.

MR. BROWN: And, got it, Your Honor, and that's -- that's on their agenda and we will -- we'll be more aggressive about that --

THE COURT: Okay.

MR. BROWN: -- because --

THE COURT: Okay.

MR. BROWN: -- it is important and sometimes there's a mistake or something and we can see that and if they want to correct a mistake, maybe. But the problem that we've had is --

THE COURT: Let them write them --

MR. BROWN: -- changing the outcome.

THE COURT: -- and send you a copy.

MR. BROWN: Yes. So this is for example, Your Honor, we developed a pamphlet -- there's a picture of it here -- that we hand out at this conference talking about this program and the significance of their role and quoting the Court's comment about how important these physicians are to it, and we're getting some interest.

Like in the last few days here in Philadelphia, we have iPads there with this sign up, and we have about 40 doctors who are new to us who have signed up to get more information to be considered.

THE COURT: Good.

MR. BROWN: So we're trying to continue to beat the bushes to plug any of the gaps in their network that we saw on the map. And this, now getting into the substance of the motion and we've heard a lot about it and we do have good papers I think -- I hope that lay it all out, so I don't want

to repeat any of that, but the rules that we're looking at stem from the Court's order on January 9th about the whole generally consistent explanation issue.

And Mr. Buchanan's numbers about the appeals from the NFL, a lot of the appeals that we're seeing are unrelated to the suspicion about distance but there have been appeals of claims where there is a disparity between the BAP criteria and the diagnosis or test outcomes where the NFL feels it's not generally consistent and it has to be explained, which was the point of this -- this January 9 order.

So that's where we're getting a number of -- most of the appeals that aren't like over location issues, but they're on the substance of this generally consistent, which these rules are also generally designed to resolve or deal with.

And this, Your Honor, it's in every program we work on. We have a basic settlement agreement and sometimes a quite lengthy one and very well thought out by the parties and the Court, and it has the skeleton or the basics of how the program is going to work and sometimes a lot of detail like this, but it's very common for any administrator including when we do our do our job in these, to sort of fill in the gaps, to fill in --

THE COURT: Does this happen --

MR. BROWN: -- the how --

THE COURT: Does this happen in other settlements

also that --

MR. BROWN: It happens in every settlement.

THE COURT: Every settlement, okay.

MR. BROWN: There are adjustments, there are procedures that have to be made that put details on top of the basic framework that the parties worked out, and this one has a lot of detail. But in terms of making it work and adjusting the situation, this is very common and we cannot do anything that contradicts a term in the settlement agreement, an amendment.

But we did not see these as amending anything. There's nothing in the settlement agreement that says expressly that you have an unfettered right to choose and the AP cannot do anything but two things, so we didn't see anything that prevented this.

And so working with the Special Masters, we came up with ideas that we thought would address some of the phenomenon or circumstances we've seen, and we laid out the authority to do that that is in the settlement agreement about investigating claims, see if they qualify, working with the Special Masters.

And obviously the Court has the ultimate authority over this under your retained jurisdiction to make sure these things are appropriate and the Court exercised that authority and approved these rules. Now, there are 27 rules. The

motion to reconsider deals with five of them. We've heard a little bit about all these today.

This question about the rule that Mr. Langfitt mentioned about the relationship between a physician in the network and a law firm, that's just based on sort of a conflict of interest thing that we don't want a doctor who's on the payroll of a law firm diagnosing that law firm's client in this program.

Whether it's either conscious or unconscious, there's a -- just some sort of an appearance that there's an influence there that people might not trust. And so we just rule it out and it's -- it's something that only has come up once but it's just an ethical rule that we think they have to abide by.

I don't -- I really can't imagine a situation where we would approve that where we have a doctor working for a law firm and also diagnosing that firm's players, and one of the reasons, Your Honor, is that we don't want the class to feel like there's some lawyers who have an advantage because they've got their person in the program who's on their payroll too or that you have to have -- go to that firm to be successful, and also the pro se players don't have access to that, the unrepresented players. So that's probably all we need to say about that rule.

The others I can address pretty quickly because

we've heard a lot about the mileage rule and the percentages and --

THE COURT: That's what this -- as I understood it, that was what this hearing was focused on.

MR. BROWN: Yes, and we think it will work the way it's designed again because of the coverage opportunity and the neuropsychologists, we've got even more of the class that have somebody within 50 miles of the MAF physician.

If you add it all together it's 200 miles maximum, 150 plus 50 to get to the neuropsych, so we've got pretty good coverage and where we don't, we've got this exception ability and as class counsel pointed out, there are 1,700 players who only have access to one today.

Until we get more fruitful about our cultivation exercises, there's one. But if that doctor is unavailable, that's what this exception process is for. If they have a relationship with a doctor or there's a speciality they want or they can't get in soon enough or they have some -- they can't find anybody close enough, email us, call us.

There's an on-screen form for it that you can -- this is what it looks like. If you go on our website or on the -- there's this -- you can fill it out here. You look at finding doctors and it will -- if you plug in your address, the player's address, either the player does it or the lawyer does it, and you get these results that show your choices and

it will show you the miles and the instructions will tell them use these miles, not the driving distance, this is as the crow flies miles, and pick one within 150 miles and if you don't want one or can't get in there, let us know, contact us and we will -- we will help you.

And how they do that, they can do it right there on the screen with this exception request form that they can fill out right on the screen. They can send -- download this form and send it to us or they can just email us and people are already doing that.

And it's built upon the premise that the settlement agreement says that geographic proximity is one the criteria for selecting these doctors in the first place so they're -- they're obviously in the settlement agreement with some concern. People shouldn't have to travel.

And although it sounds a little patronizing to say it, there is some -- some concern about players traveling -- a player who is diagnosed as having difficulty with any activity outside the home and getting on a plane and flying 2,400 miles to see a doctor, and so this would avoid that burden and expense.

But it also, as Mr. Langfitt and Mr. Locks said, the real goal here is to control the forum shopping for doctors that are perceived rightly or wrongly as providing a golden ticket to payment, and we did see that happen. We see it

happen in a lot of programs where people -- either word gets out that that's the go-to person or lawyers think it is or they have some structure set up to where they have an assembly line going on where they do generate these claims in volume.

We have seen it in this program with the audits that Mr. Buchanan mentioned where people traveled up to 2,400 miles and averages over 1,000 miles to go see a particular physician for some reason. And then the four physicians that we had to terminate as MAF physicians had high-mileage, high-volume traffic and once we realized that was going on, we could react to it.

The goal here is to be able to react to it or prevent it sooner because we would like to keep the weeds out of the garden before they seed, and so the idea is here let's know about it in advance, which is why we said let's make it mandatory with a big exception hole to it rather than aspirational or as a suggestion because -- and we understand that.

I do think, Your Honor, that if we make it just a recommendation, it will be kind of like a speed limit on a highway which is there for safety for everybody involved. It's mandatory. It's not just a suggestion, though I guess we see people treat it like it is.

But it's -- we have guardrails on the highway to keep us out of the ditches, we have the speed limit for

safety. That's a rule. If you break it, there are consequences. Here, we want this -- if you didn't make the speed limit mandatory, almost nobody would abide by it because there's this group psychology of why should I do it if other people had an advantage and they're not following it.

Plus, it's just there's no consequences if you don't. So here, we want to clear it up on the front end. We want the claim -- we just want to know about it. We want to know -- if we had known about it in the four terminated physicians sooner, we could have caught that sooner.

We want to just say let us know, we're going to look at it in 24 hours. If there's a question, we're going to talk to you about why you want this doctor and a lot of times we'll know the doctor. Is it a doctor who's got -- who's performing great and we don't have any questions about it? Fine.

If it's somebody that's got some questions or the distance doesn't make sense, we all know that no profession or industry is immune from either corruption or mistake or temptation or influence.

We see it in doctors like Medicare fraud or opioid prescription abuse. We see it in lawyers. Michael Cohen reported a person yesterday. We see it in college admission officers or coaches. I mean, those are the type of things that happen if you don't have adequate controls and so we would like to have this control here to deal with it on the

front end because what --

THE COURT: I don't know how many you had, Mr. Brown, but I -- a few were brought to my attention where we had a lawyer from say -- a lawyer from Pennsylvania and a player from Florida going to a doctor in Texas --

MR. BROWN: Right.

THE COURT: -- and that was a red flag. I mean, and I don't know how many you have, I didn't go through that, but as my recollection was, it was not unsubstantial --

MR. BROWN: It --

THE COURT: -- and that was my concern and my concern about this kind of -- this kind of restriction.

MR. BROWN: That was our concern as we watched that emerging, Your Honor, and that's what -- these are the four physicians we had to terminate as MAF physicians who accounted for over about half of all the 1.5 and 2 diagnoses that we had from MAF physicians came from these four, and that's what was happening.

There was this big geographic triangle about it and it didn't make a lot of sense but we didn't notice it until the claims starting coming in and then we were looking at them and they didn't make a lot of sense and we were getting help from the AAP about them, and but this $46 million went out the door on these claims before we could catch it.

And some of those were valid, some of them, and

that's the goal of having AAP review who have even terminated things. So let's find the ones that are medically correct and pay them. But if we had known or had this provision in place sooner, we would have caught those sooner and that's the goal here, you just set up those guardrails with exceptions.

And then the rest of this, Your Honor, that the motion deals with, the generally consistent issue, we're just implementing the Court's order on the generally consistent point. This is something that we want to help the doctors understand, that when they're -- and it only applies to 1.5 and 2 claims, but when they're diagnosing in the MAF, they can make a diagnosis that's generally consistent with the BAP criteria.

If you break down the BAP criteria or the settlement agreement requirements for a level 1.5 and 2, it's really four things. It's this concern issue, it's the cognitive decline which is the 14 tests in the Exhibit 2, and then there's this functional impairment under the clinical dementia rating -- CDR methodology, and then the doctor also has to say it's not from delirium or substance abuse or your own medicine that's causing your impairment.

This one right here is really the only one where the generally consistent thing comes into play because on this one, the settlement agreement says the BAP doctors and the MAF doctors act generally consistent with the CDR. So your order

on January 9th that requires these MAF physicians to explain themselves, it's really explaining what they and the neuropsychologist have done on this cognitive decline issue and so we are -- we want to make sure the doctors understand that and train them in it.

We're still using the definition that the Special Master adopted with us and in an opinion about what generally consistent means, the common elements that predominate over the uncommon elements. We're trying to put some clarity in that.

Plus what the doctor tells us doesn't have to be lengthy, it doesn't have to be page and pages, it just has to be more than just a conclusion that I find it generally consistent. It has to be medically sensible and we kind of know that when we see it and if we don't, we'll ask the AAP for help on whether it makes sense.

But we want to make sure everybody understands how this is going to work and get that cleared up on the front end of the claim so that they'll go through without the appeals because people are worried about whether it's adequately explained or whether it's generally consistent or not.

We think this rule will help us do that, and then we want to be able to turn to these two members of the AAP to help us as we have up until now. They are not going to review every claim. This is not a double review of every claim.

This is not what we had to do in diatribe with Judge Bartle. Mr. Locks and I worked on that together where we had to move to 100 percent medical review of every claim because we were to stop the assembly line process.

In this process, we are just using the AP to review claims in isolated instances where we've terminated an MAF physician or just where we need help, and the settlement agreement clearly allows them to advise on medical issues. They are the Appeals Advisory Panel.

If they were just supposed to do appeals, I guess it would just have been called the Appeals Panel. But it's -- it's there to help the Court and the Special Masters to allow us to tap into that on medical issues.

And that's very common in these programs too, to have somebody who's a doctor, who's a neurologist and these are really highly trained credentialed doctors, the eight doctors who are on the AAP, and the two of them that have been helping us are enthusiastic about it.

They have the time, they are responsive to us and we just need them there to help us make sure the medicine is done correctly, and that's the overall goal for all of us.

But the end result is, Your Honor, if anybody has questions about these rules, if anybody has -- needs an exception, if anybody has a question about how we're handling a claim, all they have to do is ask us. They could call us,

they could go to the website, there's a lot of information there. They could email us and we deal and respond with these things every day.

THE COURT: Thank you very much.

MR. BROWN: Thank you, Your Honor.

THE COURT: Very helpful.

MR. BROWN: Thank you.

THE COURT: Okay.

MR. LOCKS: Your Honor --

THE COURT: I have -- you have --

MR. LOCKS: Your Honor, may I make a statement?

THE COURT: Yes, for only -- yes, but a short one, Mr. Locks.

MR. LOCKS: Can I cross-examine him on some of his statistics? These things are being brought up now specifically without our having any knowledge about them having been class counsel, having been part of the negotiations and having a certain -- certain negative impact. His motivation is terrific. He is a terrific Claims Administrator. But there are certain flaws in some of the logic --

THE COURT: I'm --

MR. LOCKS: -- and we don't have an opportunity to express them because we don't know all of those statistics and we try to talk about them informally --

THE COURT: What kind of statistics? What -- explain exactly what you mean, Mr. Locks. Precisely, what do you want to know?

MR. LOCKS: Tell me how many of the 61 of 121 doctors who are MAF doctors have filed a claim for a monetary award claimant. No more than 50 percent is my view.

THE COURT: So?

MR. LOCKS: And how many of the remaining 50 percent have examined a qualified monetary award claimant for more than one or two people? Now, you don't have 121 qualified doctors out there on the street, you have a couple of clusters of them as he has pointed -- as he knows, and don't have the availability of going to a doctor locally who has the specialty or the knowledge that you need.

And by the way, you're paying for it. You're a player going out and not having the right to choose this doctor. Now, I know they're trying to get more doctors, but they don't have them and the statistics that they're referring to about some of the abuses are historical.

It's not going to happen again. The BAP program is over in constant. From now on it's an MAF program for 63 years because after two more weeks if you're not registered for it, you don't get it anymore.

THE COURT: You mean BAP?

MR. LOCKS: The BAP so you're --

THE COURT: Well, but for the people that's plenty of notice.

MR. LOCKS: Well oh, I absolutely agree. I -- notice on top of notice on top of notice, I understand. But the problems from the original quantity of claims is not going to be addressed by restricting the player's right to go to his own doctor if he wants to, wherever that may be, pay for it and submit a claim.

It's either valid or not, no matter whether he's 200 miles away or he's 2,000 miles away, and that's what this is doing now and it's changing the fundamental agreement --

THE COURT: I --

MR. LOCKS: -- that we went out on the street --

THE COURT: I did --

MR. LOCKS: -- I went and talked to hundreds of -- I didn't talk to hundreds personally -- of the players and said the best part of this program is you've got an opportunity for a free exam at blah, blah, blah, blah, blah, but you can always go to the doctor you want --

THE COURT: Okay.

MR. LOCKS: -- and that's what they're not preventing beyond. The rest of the program, the rest of the adjustments, they're all in good faith --

THE COURT: Well this one --

MR. LOCKS: -- and they are intended to be good.

THE COURT: -- is in good faith too.

MR. LOCKS: I'm sorry?

THE COURT: This one is in good faith. You may not like it, but it's certainly in good faith.

MR. LOCKS: Well --

THE COURT: I was the one who was behind it so I take exception to that.

MR. LOCKS: Well, sometimes you and I might disagree.

THE COURT: I agree with that. Okay.

All right, Mr. Buchanan, did you --

MR. BUCHANAN: Briefly, Your Honor --

THE COURT: It's not a question of good faith, it's a question of whether or not it's the right thing to do --

MR. BUCHANAN: Two quick --

THE COURT: -- and I certainly will rule on that.

MR. BUCHANAN: Two quick points, Your Honor, just in response to Mr. Brown's points. As I think Your Honor knows, we did take a look at every claim that gets approved and monitor to see whether there's a statement that should be supported if it's going to an appeal, if there's a further statement that needs to be submitted if there's an objection, so we -- we have some knowledge and familiarity with the concerns and the process that underlies this.

Just two footnotes I wanted to highlight, the first

with regard to the AAP consultation by the Claims Administrator. As we understand what Mr. Brown is outlining, this is where the Claims Administrator essentially needs a consult on a medical question, and we think Your Honor has discretion in the agreement obviously to consult the AAP for medical advise and you could obviously provide that discretion to the Special Masters and further down in the process.

We would be concerned and we're going to take -- obviously be vigilant in looking for this. If it turns into an AAP review of every level 2 claim, every level 1.5 claim or every generally consistent claim, if Mr. Brown and his team needs medical insight that he doesn't have within his walls so that he can properly do his function, that certainly is one thing.

To the extent it turns into a broader appellate level review in the claims administration process, we would have that concern, but we understand we have the right and opportunity obviously to evaluate how this plays out and be heard again at a later point in time before the Special Masters.

THE COURT: Thank you.

Would you like to be heard again?

MR. BROWN: Your Honor, I can address briefly Mr. Locks' questions and I -- I see he's concerned and obviously we've talked a lot about numbers and data and we have so much

data and I'm happy to share that and I did not mean to use anything that he wasn't aware of. He's correct that we have 121 doctors who are up-trained, under contract, open for business in the MAF.

About 68 of them have actually done diagnoses for which we've seen claims. We don't know how many players they've seen and examined and it didn't find a qualifying diagnosis and so we didn't get a claim because we don't make the appointments.

One of the rules the Court approved directs them, tell us about your appointments and your outcomes up or down. We want to monitor whether somebody is never finding anybody qualified. That's a concern in the other direction. We want to monitor that too, and we will if we get that information from them.

I think we don't know why some of these doctors haven't had people come to see them. Some of them have quit because they never got anybody.

We think part of it was that lawyers were sending them across county to somebody else and so they -- they had players within 150 miles of them and nobody ever came to see them. But we want to make sure everybody understands that and we want everybody active and we want to know what their appointments are.

THE COURT: Okay, thank you very much.

MR. BROWN: Thank you, Your Honor.

THE COURT: Okay, I'm going -- Court is adjourned, I am going to ask two things. I'm going to ask representatives of counsel to come --

(Matter concluded, 11:29 a.m.)

* * *

C E R T I F I C A T I O N

I, Diane Gallagher, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

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